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**SB-1044 Employers: emergency condition: retaliation.** (2021-2022)

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**Senate Bill No. 1044**

**CHAPTER 829**

An act to add Chapter 11 (commencing with Section 1139) to Part 3 of Division 2 of the Labor Code, relating to employment.

[ Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1044, Durazo. Employers: emergency condition: retaliation.

Existing law establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement, under the direction of the Labor Commissioner. Existing law authorizes the division to enforce the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship.

This bill would prohibit an employer, in the event of an emergency condition, as defined, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe, except as specified. The bill would also prohibit an employer from preventing any employee, including employees of public entities, as specified, from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to confirm their safety. The bill would require an employee to notify the employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite, as specified. The bill would clarify that these provisions are not intended to apply when emergency conditions that pose an imminent and ongoing risk of harm to the workplace, the worksite, the worker, or the worker's home have ceased.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Chapter 11 (commencing with Section 1139) is added to Part 3 of Division 2 of the Labor Code, to read:

**CHAPTER 11. Workers' Rights in Emergencies**

**1139.** (a) As used in this chapter:

(1) (A) "Emergency condition" means the existence of either of the following:

(i) Conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act.

(ii) An order to evacuate a workplace, a worksite, a worker's home, or the school of a worker's child due to natural disaster or a criminal act.

(B) "Emergency condition" does not include a health pandemic.

(2) "A reasonable belief that the workplace or worksite is unsafe" means that a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises. The existence of any health and safety regulations specific to the emergency condition and an employer's compliance or noncompliance with those regulations shall be a relevant factor if this information is known to the employee at the time of the emergency condition or the employee received training on the health and safety regulations mandated by law specific to the emergency condition.

(b) In the event of an emergency condition, an employer shall not do either of the following:

(1) Take or threaten adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe. This paragraph does not apply to the following:

(A) A first responder, as defined in Section 8562 of the Government Code.

(B) A disaster service worker, as defined in Section 3101 of the Government Code.

(C) An employee required by law to render aid or remain on the premises in case of an emergency.

(D) An employee or contractor of a health care facility who provides direct patient care, provides services supporting patient care operations during an emergency, or is required by law or policy to participate in emergency response or evacuation.

(E) An employee of a private entity that contracts with the state or any city, county, or political subdivision of the state, including a special district, for purposes of providing or aiding in emergency services.

(F) An employee working on a military base or in the defense industrial base sector.

(G) An employee performing essential work on nuclear reactors or nuclear materials or waste.

(H) An employee of a company providing utility, communications, energy, or roadside assistance while the employee is actively engaged in or is being called upon to aid in emergency response, including maintaining public access to services such as energy and water during the emergency.

(I) An employee of a licensed residential care facility.

(J) An employee of a depository institution, as defined in Section 1420 of the Financial Code.

(K) A transportation employee participating directly in emergency evacuations during an active evacuation.

(L) An employee of a privately contracted private fire prevention resource, that is subject to the regulations developed pursuant to Part 4.5 (commencing with Section 14865) of Division 12 of the Health and Safety Code and operating as a qualified insurance resource. "Qualified insurance resource" means personnel and equipment working for, or contracted by, an insurance company with a mission to mitigate risk to insured structures and operating in compliance with instruction and oversight of the incident management team of the authority having jurisdiction.

(M) An employee whose primary duties include assisting members of the public to evacuate in case of an emergency.

(2) (A) Prevent any employee from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

(B) In addition to employees of private entities, this paragraph applies to any employee of the state or any city, county, or political subdivision of the state, including a special district.

(C) This paragraph shall not apply to the following:

(i) An employee of a depository institution as defined in Section 1420 of the Financial Code.

(ii) An employee of any correctional facility.

(iii) An employee who is actively operating equipment permitted under Chapter 4 (commencing with Section 7340) of Part 3 of Division 5, Part 8 (commencing with Section 7900) of Division 5, and Part 8.1 (commencing with Section 7920) of Division 5.

(c) (1) When feasible, an employee shall notify the employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite prior to leaving or refusing to report.

(2) When prior notice described by paragraph (1) is not feasible, the employee shall notify the employer of the emergency condition that required the employee to leave or refuse to report to the workplace or worksite after leaving or refusing to report as soon as possible.

(d) This section is not intended to apply when emergency conditions that pose an imminent and ongoing risk of harm to the workplace, the worksite, the worker, or the worker's home have ceased.

(e) In any action by a current or former employee that could be brought pursuant to the Labor Code Private Attorneys General Act of 2004 (Part 13 (commencing with Section 2698)) for violations of this chapter, the employer shall have the right to cure alleged violations as set forth in Section 2699.3.